

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	
	:	
KIOR, Inc.,	:	Bankruptcy No. 14-12514
	:	BAP 15-62
	:	
Debtor.	:	
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KIOR, INC.,	:	
	:	
Appellant,	:	
	:	
v.	:	C. A. No. 15-1009-GMS
	:	
LEIDOS ENGINEERING, LLC,	:	
	:	
Appellee.	:	

RECOMMENDATION

At Wilmington this **20th** day of **January, 2016**.

WHEREAS, pursuant to paragraph 2(a) of the Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District dated September 11, 2012, a teleconference was held on January 19, 2016 for an initial review and discussion with counsel to determine the appropriateness of mediation in this matter;

WHEREAS, as a result of the above screening process, the issues involved in this case are not amenable to mediation and mediation at this stage would not be a productive exercise, a worthwhile use of judicial resources nor warrant the expense of the process.

Prior to the teleconference, counsel provided the respective positions of their clients regarding mediation. The decision under consideration in this appeal was the denial by the

Bankruptcy Court of Appellant's application for allowance and payment of a claim under 11 U.S.C. § 503(b)(3) and (4), a substantial contribution argument. Prior to the hearing in Bankruptcy Court, Appellant and Appellee Reorganized Debtor had attempted to resolve the matter. The offer made by the Reorganized Debtor during negotiations was made before its success during the Bankruptcy proceeding. On appeal, only Appellant desires to mediate. Appellee Trustee, because of its position during the hearing and its fiduciary duty and obligations, cannot be directly involved in mediation. The Reorganized Debtor requests the following briefing schedule be entered: (a) Appellant serve and file its introductory brief within thirty (30) days of the final decision on mandatory mediation; (b) the Reorganized Debtor serve and file its responsive brief within thirty (30) days of service of Appellant's brief; and (c) Appellant serve and file a reply brief within fourteen (14) days of service of the Reorganized Debtor's brief.

THEREFORE, IT IS RECOMMENDED that, pursuant to paragraph 2(a) Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District and 28 U.S.C. § 636(b), this matter be withdrawn from the mandatory referral for mediation and proceed through the appellate process of this Court. The parties were advised of their right to object to this Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), FED. R. CIV. P. 72(a) and D. DEL. LR 72.1.

Local counsel are obligated to inform out-of-state counsel of this Order.

/s/ Mary Pat Thyng
UNITED STATES MAGISTRATE JUDGE